IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision : September 24th , 2007

IA No.9506/2006 and Arb.P.No.126/2006

GE Countrywide Consumer Financial Services Ltd ..... PETITIONER

Through: Mr.Gurmeet Bindra, Advocate.

Versus

$ Sh.K.K.Kapoor ..... RESPONDENT

Through: Nemo.

CORAM :-

*** HON'BLE MR. JUSTICE ANIL KUMAR**

1. Whether reporters of Local papers may be allowed to see the judgment? YES
2. To be referred to the reporter or not ? NO
3. Whether the judgment should be reported in the Digest? NO

ANIL KUMAR, J. (ORAL)

1. This is an application by the petitioner seeking modification of order dated 9th March, 2006 and seeking appointment of some other arbitrator in place of Mr.Justice (Retd) J.B.Goel to adjudicate the dispute arisen between the parties.

2. The applicant contended that by order dated 9th March, 2006 the petition was allowed under Section 11 of Arbitration and Conciliation Act,

1996 and Mr.Justice J.B.Goel (Retd) was appointed as the sole arbitrator to adjudicate the dispute between the parties. While appointing Mr.Justice J.B.Goel (Retd) as an arbitrator the parties were directed to appear before the arbitrator on 29th May, 2006.

3. The petitioner/applicant contended that when the counsel for the applicant appeared before the learned arbitrator, fees was quoted by the learned arbitrator to conduct the arbitration proceedings. However considering the commercial viability for the petitioner company, the fees quoted by the arbitrator could not be agreed to by the petitioner company. Consequently, the arbitrator did not proceed with the matter and returned the matter.

4. The petitioner, therefore, in the facts and circumstances has contended that the arbitrator has withdrawn from the office for the reason that the fees quoted by him could not be paid by the petitioner. Consequently, the mandate of the arbitrator has been terminated under Section 15 of the Arbitration and Conciliation Act, 1996 and, therefore, the petitioner has prayed for the substitution of an arbitrator in place of Mr.Justice J.B.Goel

(Retd) already appointed as a sole arbitrator pursuant to order dated 9th March, 2006.

5. The application has been filed by the petitioner under Section 151 of the Code of Civil Procedure. The learned counsel for the petitioner has contended that the application by petitioner is an application under Section 15 of the Arbitration and Conciliation Act and merely mentioning Section 151 of the Code of Civil Procedure will not disentitle the petitioner for the relief claimed, as the Court is competent to grant the relief claimed by the petitioner in the application under Section 15 of Arbitration & Conciliation Act, 1996.

6. The respondent/non-applicant was served by substituted service by publication in 'The Statesman' as the notices sent to the respondent/non-applicant had received back with different remarks as `premises found locked' and that `one person comes there at the address given of the respondent only to collect the rent'.

7. The learned counsel for the petitioner has relied on (2004) 12 SCC 278, N.Mani Vs. Sangeetha Theatre & Ors in support of his contention that

the application filed by the petitioner under Section 151 of the Code of Civil Procedure be treated as an application under Section 15 of Arbitration & Conciliation Act, 1996 for substitution of the arbitrator appointed pursuant to order dated 9th March, 2006.

8. In N.Mani (Supra) it was held by the Supreme Court that reference to a wrong provision of law by itself does not vitiate the exercise of power so long as the power exists and can be traced to a source available in law. The relevant observation of the Apex Court is as under:-

> "It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law."

9. Under Section 15(1)(a) of the Arbitration & Conciliation Act where the arbitrator withdraws from the office for any reason, a substitute arbitrator can be appointed by a Court under Section 15(2) of the said Act.

10. The arbitrator appointed by order dated 9th March, 2006 has withdrawn

from the office for the reason that the fees quoted by him were found to be commercially unviable by the petitioner who was unable to pay the fees and consequently the arbitrator has withdrawn from the office which fact has not been denied and there is no reason to disbelieve the petitioner who has averred about it in his application which application is also supported by the affidavit of Ms.Shalini Saxena, Assistant Manager (Legal) of the petitioner company.

11. Consequently, the inevitable inference in the facts and circumstances is that the arbitrator appointed by order dated 9th March, 2006 has withdrawn from the office and, therefore, the mandate of the arbitrator stands terminated and petitioner is entitled for appointment of a substitute arbitrator.

12. The petition is, therefore, allowed and consequently, in the facts and circumstances I appoint Mr.S.M.Chopra, Advocate (Retd, Additional District Judge), 181, Deshbandhu Apartments, Kalkaji, New Delhi-110029 (Mobile No.9213230349, Residence No.26484158) as substitute arbitrator. The fees of the arbitrator shall be Rs.6000/- per hearing subject to a maximum fees of Rs.60,000/-. The petitioner shall appear before the arbitrator on 8th October,

2007 at 4.30 PM. A copy of this order be sent to the learned arbitrator. The petitioner is also directed to give a copy of this order to the arbitrator. Copy to the counsel for the petitioner, dasti.

September 24, 2007 **ANIL KUMAR, J.**
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